Chapter 2

Objects of the bill

PAYG instalment reduction for small business/introduction of regulations (Schedule 1)

2.1 Schedule 1 to the bill amends section 45-400 of Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953), which sets out how the Commissioner of Taxation works out the pay-as-you-go (PAYG) tax instalments on the basis of GDP-adjusted notional tax for quarterly payers.

2.2 The amendments provide for a 20 per cent reduction of the amount of the PAYG tax instalment worked out under section 45-400 for the quarter that includes 31 December 2008.

2.3 In general terms, the reduction will apply to small business taxpayers who are quarterly taxpayers.[1] The EM states:

> Small business taxpayers who will be eligible for the reduction are *small business entities*…a partner of a partnership that is a small business entity, or a beneficiary of a trust that is a small business entity, for either the 2007-08 or 2008-09 income years.[2]

2.4 'Small business entity' is defined in section 328-110 of the *Income Tax Assessment Act 1997* (ITAA 1997). Broadly, an entity is a small business entity if it is carrying on a business for an income year and its aggregated turnover is less than $2 million for the previous income year or is likely to be less than $2 million for the current income year.

Reason for the amendments

2.5 Under the PAYG instalments system, taxpayers earning business or investment income pay instalments during the year towards their final tax liability for that income year. Certain taxpayers may pay their PAYG instalments on the basis of GDP-adjusted notional tax, which in broad terms is worked out by 'uplifting' a taxpayer's income in the previous year by that year's rate of nominal GDP growth (the GDP uplift factor).

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1 This is expected to be those small business entities with aggregated turnover of $2 million per annum or less: the Hon. Wayne Swan MP, 'Reduction of the quarterly pay-as-you-go instalment due in February 2009 for small businesses', Media Release 140, 12 December 2008, p 1, http://www.treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2008/140.htm&pageID=&min=wms&Year=2008&DocType=0, accessed 16 February 2009. Note that from the 2009-10 income year 'small business entities' will automatically be eligible to use the GDP-adjustment method.

2 Tax Laws Amendment (2009 Measures No. 1) Bill, Explanatory Memorandum, p 10.

2.6 The explanatory memorandum (EM) to the bill explains that the GDP uplift factor can be unrepresentative of expected profit growth in income years where economic and business conditions change quickly and the expected income of taxpayers changes accordingly. This can mean taxpayers are required to pay PAYG instalments that are too high compared with their actual income, with the overpaid tax being refunded at the conclusion of the income year when the taxpayer's final tax liability is assessed.

2.7 Specifically, for the 2008-09 income year, due to the global financial crisis, the forecast profit growth for small businesses is significantly lower than the GDP uplift factor of 8 per cent. In announcing the measure, the Treasurer, the Hon. Wayne Swan, provided the following justification for the reduction:

> This 20 per cent cut in the…instalment will more accurately reflect small businesses' average actual profit growth in the current economic environment. It will provide immediate and much-needed cash flow relief to small businesses and encourage small business confidence.[3]

2.8 The EM states that the 20 per cent reduction for the quarter broadly represents the annual reduction in instalments necessary to reflect the expected slowing in small business profit growth for the 2008-09 income year.

Introduction of regulation-making power

2.9 Schedule 1 also introduces a regulation-making power to allow the amount of the PAYG instalment worked out under section 45-400 of the TAA 1953 to be reduced in the future, in circumstances specified by regulations.

Reason for the amendment

2.10 The EM notes that while taxpayers are able to vary their instalment amounts, as calculated and notified by the Commissioner, many are reluctant to do so because underpayments can trigger the general interest charge. It is therefore desirable to build more flexibility into the law to allow the instalment amounts calculated on the basis of GDP-adjusted notional tax to be reduced 'to more accurately reflect prevailing economic conditions and actual income of taxpayers for a particular income year'.[4]

Temporary residents’ superannuation and unclaimed money (Schedule 2)

2.11 In 2008 the *Superannuation (Unclaimed Money and Lost Members) Act 1999* was amended to provide that the superannuation money of a former temporary resident is included in the unclaimed superannuation regime and is payable to the

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3 The Hon. Wayne Swan MP, 'Reduction of the quarterly pay-as-you-go instalment due in February 2009 for small businesses', *Media Release*, no 140, 12 December 2008, p 1.

4 The Hon. Wayne Swan MP, 'Reduction of the quarterly pay-as-you-go instalment due in February 2009 for small businesses', *Media Release*, no 140, 12 December 2008, p 1.

Commissioner (but can still be claimed at any time by the departee).[5] The second reading speech to the bill explains:

> This was done to help reduce the number of lost accounts and unclaimed money in the superannuation system which arises when temporary residents depart Australia without taking their superannuation with them.[6]

2.12 Schedule 2 amends a number of Acts as a consequence of those changes to the unclaimed superannuation scheme. The affected Acts include legislation governing:

- financial transaction reporting;
- small superannuation accounts payments;
- superannuation guarantee shortfall components; and
- government superannuation co-contribution legislation.[7]

2.13 Schedule 2 will also make changes to the broader unclaimed money regime to make the existing provisions more compatible with the new provisions for the payment of temporary residents' unclaimed superannuation to the Australian government. The changes include:

- allowing the Commissioner to set by legislative instrument the due dates for statements and payments of unclaimed monies;
- requiring superannuation providers to provide statements containing certain information pertaining to unclaimed money;
- requiring superannuation providers to correct material errors or omissions from unclaimed money statements;
- defining the circumstances requiring payments of unclaimed superannuation by the Commissioner;
- making the penalties and general interest charges for unclaimed money consistent with broader taxation administration;
- clarifying the law in relation to the taxation components of unclaimed money payments made by the Commissioner;
- other administrative issues, such as refunds and returns and recovery of overpayments; and

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5 For details on the 2008 changes see the Senate Standing Committee on Economics report, *Temporary Residents' Superannuation Legislation Amendment Bill 2008 [Provisions]; Superannuation (Departing Australia Superannuation Payments Tax) Amendment Bill 2008 [Provisions]*, November 2008.

6 The Hon. Chris Bowen, Minister for Competition Policy and Consumer Affairs, and Assistant Treasurer, *House of Representatives Hansard*, 12 February 2009, p 7.

7 Specifically, the affected Acts are the *Financial Transaction Reports Act 1988, Income Tax Assessment Act 1997, Small Superannuation Accounts Act 1995, Superannuation (Government Co-contribution for Low Income Earners) Act 2003* and *Superannuation Guarantee (Administration) Act 1992.*

- other minor refinements and improvements to the operation of the existing law.[8]

2.14 These amendments are also intended to improve the general administration of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*. The EM notes that most of the changes are consistent with (and in many cases identical to) the requirements for the new temporary residents unclaimed superannuation regime.[9]

Why are the amendments necessary?

2.15 In the second reading speech to the bill, the Minister for Competition Policy and Consumer Affairs, and Assistant Treasurer, the Hon. Chris Bowen, stated:

> Without these changes superannuation providers would need to maintain two very different unclaimed money regimes, one for general unclaimed superannuation money, and another for the temporary residents' unclaimed superannuation regime.[10]

Reforms to income tests (Schedule 3)

2.16 Schedule 3 introduces reforms announced in the 2008-09 budget. The reforms expand the income tests used in determining eligibility for a range of government financial assistance programmes to include certain salary sacrificed contributions to superannuation, total net investment losses and adjusted fringe benefits.

2.17 The amendments also revise the parental income test, and family actual means test, which are used to determine a dependant's eligibility for Youth Allowance, to ensure that the particular superannuation contributions and losses that are assessed as income for the purposes of those tests align with the 'reportable superannuation contributions' and 'total net investment loss' definitions (see below).

2.18 Financial assistance programmes affected by the reforms will include student financial assistance programmes, family assistance payments, income support payments for individuals below age pension age and various means-tested tax benefits.[11] Affected Acts and programmes are summarised in the table below.

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8 Tax Laws Amendment (2009 Measures No. 1) Bill, Explanatory Memorandum, p 16.

9 Tax Laws Amendment (2009 Measures No. 1) Bill, Explanatory Memorandum, p 16.

10 The Hon. Chris Bowen, Minister for Competition Policy and Consumer Affairs, and Assistant Treasurer, *House of Representatives Hansard*, 12 February 2009, p 7.

11 Note that certain drought assistance payments are specifically excluded; the bill will make amendments to the *Farm Household Support Act 1992* to ensure that certain superannuation contributions are not counted as income.

Table 1: Acts and programmes affected by expanded income tests

Act	***Programme(s)***
A New Tax System (Family Assistance) Act 1999	Child Care Benefit Family; Tax Benefit Baby Bonus
A New Tax System (Medicare Levy Surcharge – Fringe Benefits) Act 1999	Medicare levy surcharge
Medicare Levy Act 1986	Medicare levy surcharge
Child Support (Assessment) Act 1989	Child support
Higher Education Support Act 2003	Higher Education Loan Program
Income Tax Assessment Act 1936	Senior Australians tax offset; Tax offset for trustees (section 160AAAB)
Income Tax Assessment Act 1997	Deduction for personal superannuation contributions; Mature age worker tax offset; Spouse superannuation contributions tax offset; Tax offset for Medicare levy surcharge (lump sum payments in arrears)
Social Security Act 1991	Commonwealth Seniors Health Card Student Financial Supplement Scheme Youth Allowance
Student Assistance Act 1973	Student Financial Supplement Scheme
Superannuation (Government Co-contribution for Low Income Earners) Act 2003	Government superannuation co-contribution scheme
Veterans' Entitlement Act 1986	Commonwealth Seniors Health Card

Source: Tax Laws Amendment (2009 Measures No. 1) Bill, Explanatory Memorandum, p 10.

2.19 The measures will expand the relevant income tests by introducing new key concepts and definitions to the *Income Tax Assessment Act 1936* (ITAA 1936), *Income Tax Assessment Act 1997* (ITAA 1997), and Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953). These include:

2.20 ***Reportable superannuation contributions***: *A* new definition of 'reportable superannuation contributions' will be inserted into the ITAA 1997 which captures the particular salary-sacrificed superannuation contributions to be considered as income for means-testing purposes. 'Reportable superannuation contributions' will include employer contributions to superannuation that the employee has influenced to be made in such a way that their assessable income is reduced. These contributions will be known as 'reportable employer superannuation contributions'. From 1 July 2009, salary-sacrificed superannuation contributions made on behalf of employees will need to be recorded and reported by employers on employee annual payment summaries.

2.21 ***Total net investment loss***: A new definition of an individual's 'total net investment loss' will be inserted into the ITAA 1997. The definition captures net losses from 'financial investments' and net rental property losses. A new definition of 'financial investment' will also be inserted into the ITAA 1997 for the purposes of this definition, to include shares in a company, interests in a managed investment scheme, investments of a like nature to shares and managed investments, and investments subject to investment loan or margin loan arrangements.

2.22 The ‘total net investment loss’ definition rationalises the various definitions of net rental property loss in current legislation in one definition. This ensures the definition of net rental property losses added to income for means-tested assistance programmes is consistent across tax and transfer legislation.

2.23 An individual will have a ‘total net investment loss’ where their deductions for an income year from financial investments and rental property exceed their gross income from those activities for the year. Deductions in respect of a financial investment may be claimed for expenses such as the costs of borrowing to invest in the financial investment or management fees charged on the investment.

2.24 ***Adjusted fringe benefits total***: A taxpayer’s ‘adjusted fringe benefits total’, which is to be assessed as income for particular tax offsets, is to be defined in the ITAA 1936. The effect of the definition is that an individual's 'adjusted fringe benefits total' will be their reportable fringe benefits for the income year multiplied by 53.5 per cent.[12] An individual's 'adjusted fringe benefits total' will be assessed in determining eligibility for the senior Australians tax offset and the pensioner tax offset.

2.25 ***Rebate income*** **and** ***income for Medicare levy surcharge purposes***: New definitions of 'rebate income' and 'Medicare levy surcharge purposes' will be inserted into the ITAA 1936 and the ITAA 1997 respectively. The definitions will be used to determine eligibility for particular means-tested tax offsets and obligations to pay the Medicare levy surcharge. The effect of these definitions is to consolidate the components of income that are assessed in determining an individual's eligibility for an offset or liability to pay the Medicare surcharge. 'Adjusted fringe benefits total' may also be relevant in determining a trustee's eligibility for the offset for low-income aged persons.

Reason for the amendments

2.26 In the Second Reading speech on the bill, the Assistant Treasurer, the Hon. Chris Bowen, stated:

> The measures bring income testing up to date with contemporary remuneration arrangements. In particular, superannuation contributions will be assessed including all deductible personal contributions made by an individual and any employer superannuation contributions made on behalf of an employee that the employee has or has had capacity to influence. An example is contributions made under a salary sacrifice agreement. These contributions will need to be reported on payment summaries from 1 July 2009.

12 The figure of 53.5 per cent reflects the fringe benefits tax rate of 46.5 per cent. The formula may be expressed as: reportable fringe benefits tax total x {1 – 46.5 per cent} = adjusted fringe benefits total.

2.27 The EM for the bill states:

> These measures enhance the fairness and integrity of the tax and transfer systems by removing inconsistencies in the treatment of non-wage remuneration and ensure better account is taken of certain losses.[13]

2.28 An estimated 540 000 employees currently include salary sacrifice into superannuation as part of their income. The proportion of these that access government support has increased substantially since the 1990s, and is expected to increase further in the future. Current arrangements are inefficient and inequitable as they direct expenditure to individuals and families with sufficient resources to support themselves; they are also benefiting from significant concessional tax treatment of their superannuation contributions. The EM estimates the cost of inaction as approximately $160-170 million annually over the period 2009-10 to 2011-12, increasing over time.[14]

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13 Tax Laws Amendment (2009 Measures No. 1) Bill, Explanatory Memorandum, p 41.

14 Tax Laws Amendment (2009 Measures No. 1) Bill, Explanatory Memorandum, p 78.